BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 90 of the Commission's Rules	)	WP Docket No. 07-100
	)	
	)	PS Docket No. 06-229
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band	)	
	)	WT Docket No. 06-150
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands	)	

To: Chief, Public Safety and Homeland Security Bureau

COMMENTS OF
THE AMERICAN PETROLEUM INSTITUTE

The Telecommunications Subcommittee of the American Petroleum Institute ("API") submits these Comments in response to the Commission's Public Notice regarding the National Public Safety Telecommunications Council's ("NPSTC") 4.9 GHz band National Plan Recommendations Final Report ("NPSTC Report").[1] Although API supports the general framework suggested by NPSTC for CII access to the 4.9 GHz band, key changes and clarifications to the proposal are required to ensure that the Commission's goal of encouraging more intensive utilization of the band is realized.

[1] *See* Public Safety and Homeland Security Bureau Seeks Comment on National Public Safety Telecommunications Council's 4.9 GHz National Plan Recommendations Final Report, WP Docket No. 07-100, PS Docket No. 06-229, WT Docket No. 06-150, *Public Notice* (Rel. Oct. 30, 2013) ("Public Notice").

I. COMMENTS

Allowing expanded CII access to the 4.9 GHz band will enhance overall utilization of the band while supporting the potential to promote public safety. The 4.9 GHz band is a useful spectrum option for point-to-point and shorter range point-to-multipoint applications by CII companies as well as public safety entities.[2] Both types of users can maximize utilization of this band to their mutual benefit.

As API stated in its initial Comments in this proceeding, there are numerous commonalities between CII and public safety entities. The Commission has stated "*the very nature of the services provided by [CII] entities involves potential hazard to life and property... CII entities often work hand in hand with public safety officials at the scene of an incident,*" and "*reliable CII radio communications have long proven essential in speeding recovery from natural or man-made disasters.*"[3] These shared interests in public safety are reflected in Congressional and Commission treatment afforded CII communications services.[4]

Because of the commonality of interest between CII and Public Safety, API was eager to participate as a member of the NPSTC 4.9 GHz National Plan working group.[5] The NPSTC Report notes that CII representatives to the task team, including API, argued for broad CII access

[2] API reiterates its previous comments that the Commission should remove the gain restriction for directional antennas without adding a maximum ERP limit for point-to-point services. If CII is allowed access to the band, the Commission should update Section 90.1205(d) of the rules to remove licensing restrictions for point-to-point and point-to-multipoint links.

[3] *Id.*

[4] *See e.g.*, 47 U.S.C. § 309(j). See also H.R. Conf. Rep. No. 105-217, 105th Cong., 1st Sess., at 572 (1997)(Stating that the exemption for public safety radio services includes "private internal radio services" used by utilities, pipelines, and others.); 47 C.F.R. § 90.7; See Recommendations of the Independent Katrina Panel Reviewing the Impact of Hurricane on Communications Networks, EB Docket No. 06-119, FCC 06-83 at 5 (2006) Reciting the Independent Katrina Panel's recommendations that the Commission encourage regional, state and local emergency operating centers and the Joint Field Office to "*facilitate electric and other utilities' maintenance of priority lists for commercial power restoration.*"

[5] NPSTC Report, at Appendix A. API's participation in that working group was limited to a task team regarding critical infrastructure industry ("CII") access to the band.

to the 4.9 GHz band. In fact, the task team's initial proposal to the larger working group was that the entire band should be open to licensing by CII entities on a primary basis subject to the same conditions applicable to Public Safety.

That proposal was rejected by the NPSTC working group, and NPSTC instead proposed that CII be allowed immediate access to only 10 MHz of spectrum (two 5 MHz channels). Under the NPSTC Report, the remaining 40 MHz of the band would be subject to a three-year transition period.

During that transition period, a potential CII applicant would be required to provide Public Safety with notice of its intent to access those 40 MHz of the band. Within 30 days of the CII notice, a Public Safety entity would be entitled to take priority over the CII applicant by declaring its intent to file a competing application no later than 60 days after the notice date.[6] If, in fact, the Public Safety entity fails to file its application with the 60 days, or does not construct its system within one year, priority would resort to the original CII applicant.

Although this proposal in the NPSTC Report is not what API had requested during NPSTC 4.9 GHz task team meetings, API believes that it represents a generally acceptable compromise. It is a definite improvement over the current licensing framework, which blocks CII from holding 4.9 GHz band licenses and limits CII access to the band to written sharing agreements with a Public Safety entity for "*operations in support of Public Safety*."[7] API is not aware of the existence of a single such sharing agreement, and none is made available in the record of this proceeding. The current rules appear to have so discouraged CII investment in the band that access effectively has been precluded.

[6] If a coordinator determined that the applications were not in fact mutually exclusive, both the CII and Public Safety applications would be filed.

[7] *Id.*

Although API supports the general framework suggested in the NPSTC Report, API does have two significant concerns. First, coordination should not be limited to Public Safety coordinators. Second, the FCC should make clear that CII is permitted to access the band for any legitimate purpose.

A. The Coordination Process Should Include Business/Industrial Coordinators

The NPSTC Report states that "[a]ll applications would be submitted to one of the public safety coordinators."[8] The NPSTC Report further states that "Enterprise Wireless Association expressed desire to also be a coordinator for the band but the planning group consensus is that it is best to limit to public safety coordinators only for reasons given in the text."[9]

The only support in the NPSTC Report for limiting coordination to Public Safety coordinators alone is that the coordination process is "complex," will require the exchange of information between coordinators, and will require coordinators to contact applicants and licensees.[10] These functions are not unique or unusual and already are performed by Business/Industrial coordinators on a daily basis. They do not provide sufficient justification for creating a monopoly coordination environment for Public Safety coordinators.

Further, limiting coordination in this manner is contrary to Commission precedent. The Commission certifies frequency coordinators for specific bands upon a showing that the prospective coordinator is representative of the users to be coordinated and that the coordinator will ensure equality of applicant treatment.[11]

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[8] NPSTC Report at 12.

[9] NPSTC Report at note 16.

[10] NPSTC Report at 12.

[11] *See e.g.*, Frequency Coordination in the Private Land Mobile Radio Services, *Report and Order*, PR Docket No. 83-737, 103 FCC 2d 1093 (1986).

The NPSTC Report argues the coordination process will involve "information that is not in the databases" and Public Safety coordinators "have the best understanding of public safety needs," It stresses "the importance of protecting public safety licensees from harmful interference."[12] To the extent the band is opened for CII access, however, these issues will be resolved through objective coordination procedures similar to those already in use under Part 101.

API's members in the oil and natural gas industry have no constituency within the Public Safety coordinators and risk being treated as second class citizens in the band if Business/Industrial coordinators are excluded from assisting in the coordination process. API strongly believes that if CII entities are granted access to the 4.9 GHz band, Business/Industrial coordinators must be permitted to coordinate the band.

B. CII Access to the Band Should not be Limited to Specific Applications

The NPSTC Report states "[t]here was general agreement that a CII licensee needs assurance that, once licensed and having invested in implementing a system that supports critical public safety related business needs, they cannot be considered secondary."[13]

API wishes to make clear that there is no proposed requirement in the NPSTC Report that primary CII use the 4.9 GHz band only for applications in support of critical public safety related business needs. Such a restriction would be difficult if not impossible to define and quantify and likely would restrict CII investment in the band. Eligibility for access to the band should be based simply on an entity qualifying for inclusion in the category of CII. Beyond that, there should be no further restriction on the types of applications used, just as there are no restrictions on Public Safety using the band for administrative or other non-emergency functions.

[12] NPSTC Report at 12.

[13] NPSTC Report at 11.

II. CONCLUSION

API views the 4.9 GHz band as a potentially useful spectrum option, particularly for point-to-point and shorter range point-to-multipoint CII applications. API generally supports the NPSTC Report as described above and urges the Commission to adopt rules consistent with these Comments.

Respectfully submitted,

AMERICAN PETROLEUM INSTITUTE

By: **/s/ Jack Richards**

Jack Richards
Gregory E. Kunkle
Keller and Heckman LLP
1001 G Street NW
Suite 500 West
Washington, D.C. 20001
(202) 434-4100

Their Attorneys

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